

Chapter 7

Chapter 7 Closing

Executive Summary

SECTION 7-1

This chapter describes the preparation, execution and recordation of the closing and internal control documents needed to consummate a Restructuring Plan for a Mark-to-Market debt restructuring transaction. It discusses the roles and responsibilities of the: PAE, owner, existing and new mortgagees, and their attorneys; title company and escrow agent; OMHAR Regional Office Director and business staff; and HUD Multifamily Hub or Program Center, Multifamily Claims Branch, Multifamily Notes Branch, and Multifamily Insurance Operations Branch (MFIOB). *Within sixty (60) days of the execution of the Restructuring Commitment by the owner, all closing documents should be properly executed and recorded, title policy issued, all funds disbursed, and escrow closed.*

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General Closing Roles and Responsibilities

SECTION 7-3

- A. **Special OMHAR Regional Office Delegations.** The OMHAR Regional Office Director has the authority to execute Restructuring Commitments, OMHAR loan documents, to modify existing mortgages, and to endorse mortgages for the Mark to Market program that are insured by FHA under Section 223(a)(7) of the National Housing Act, Section 542(c) HFA Risk-Sharing, and Section 542(b) GSE Risk-Sharing.
- B. **PAE Responsibilities.** The PAE business staff and PAE closing attorney are responsible for successfully closing the restructured deal as approved by OMHAR.
- C. **Closing Escrow Agent (Third Party Fiduciary) Responsibilities.** The Closing Escrow Agent will be responsible for handling the closing of each restructured deal according to the closing escrow instructions provided by the PAE attorney.
- D. **Take-out Financing Closing Responsibilities.** The type of financing will determine which party is responsible for preparation of the take-out financing documents. The following matrix provides closing responsibilities based on financing alternatives:

**Closing Responsibilities
by Financing Alternative***

Type of Financing Alternative	Prepares Loan Documents	Reviews Loan Documents	Conducts Restructuring/ Loan Closing
Modification of existing loan	Existing mortgagee attorney	PAE attorney	Existing mortgagee attorney acting with PAE attorney
FHA-insured Section 223(a)(7)	New mortgagee attorney	PAE attorney	PAE attorney
HFA risk-sharing or other state/local government	New mortgagee attorney	PAE attorney	New mortgagee attorney acting with PAE attorney
Conventional loan	New Mortgagee attorney	PAE attorney	New Mortgagee acting with PAE attorney
FHA-insured Section 221(d)(4) or 223(f)	New Mortgagee attorney	PAE attorney and HUD MF Hub or Program Center Housing staff and OGC attorney	HUD Field Office OGC attorney will handle closing of new 221(d)(4) or 223(f) mortgage

*The chart addresses the loan financing aspects of the closing, and not the mortgage restructuring function.

Working Parties

SECTION 7-4

- A. **PAE Responsibilities.** The PAE business staff and PAE closing attorney are responsible for the following:

Business Staff

1. Overall coordination of the closing of each mortgage restructuring transaction
2. Select Closing Attorney
3. Select Closing Escrow Agent (in conjunction with Closing Parties)
4. Work with closing parties to select Title Company
5. Approve Closing Attorney's work product

6. Verify that HUD Mortgagee of Record and Unpaid Principal Balance information (F47) is correct and, if necessary, have existing mortgagee arrange for corrections as early in the restructuring process as possible
7. Work with PAE Attorney in the preparation of and obtaining full execution of the Restructuring Commitment
8. Fax copy of fully executed Restructuring Commitment to OMHAR HQ Closing Section
9. Coordinate preparation of and receipt of the Section 223(a)(7) Firm Commitment Application Package from the New Mortgagee
10. Review and recommend approval of Section 223(a)(7) Firm Commitment Application (pursuant to Appendix N)
11. Coordinate the execution of the Section 223(a)(7) Firm Commitment with the OMHAR Regional Director
12. Prepare and Distribute Closing Parties Checklist (Form 7.7) to all parties
13. Provide formal notification to existing mortgagee of pending restructure (Form 7.9) and provide copy of Restructuring Commitment
14. Coordinate receipt of necessary closing information and documentation from existing mortgagee
15. Coordinate preparation of Section 8 HAP Contract by OMHAR Regional Office
16. Notify Multifamily Hub or Program Center of need for reservation of Section 8 HAP funds
17. Coordinate the full execution of Section 8 HAP Contract by HUD Field Office Director and Owner to ensure timely closing
18. Arrange for Rehabilitation Escrow Agreement (if applicable)
19. Prepare and forward Partial Payment of Claim package to OMHAR Relationship Manager at least eighteen (18) days prior to scheduled closing date, and coordinate with OMHAR HQ Closing staff
20. Prepare and provide final Sources and Uses statement to Closing Escrow Agent and OMHAR HQ Closing staff

21. Coordinate with the HUD Field Office the transfer of Section 8 contract administration responsibility, when appropriate
22. Forward electronic copy of underwriting model to OMHAR HQ Closing Coordinator immediately upon closing

PAE Attorney

1. Prepare or review the Restructuring Commitment and certify that the Restructuring Commitment:
 - accurately reflects the approved restructuring plan
 - the form has not been altered, and
 - any changes to the form have been approved by OMHAR HQ
2. Draft M2M loan documents pursuant to Instructions to PAE Attorneys, Appendix F, and this chapter
3. Coordinate with HUD Field Office attorney to ensure a simultaneous closing when take out financing is insured under Section 221(d)(4) or 223(f)
4. Draft closing instructions for the Closing Escrow Agent
5. Provide title company with title instructions pursuant to Appendix F Title Instructions, and review pro forma title report
6. Coordinate execution of restructuring documents by Regional Office Director
7. Review new title policy for accuracy at closing
8. When requesting execution of loan documents by OMHAR Regional Office Director, provide a checklist of documents requiring execution and a letter certifying the following:
 - the closing documents accurately reflect the approved Restructuring Plan
 - the standard legal forms have not been altered, and
 - any changes to the forms have been approved in writing by the OGC attorney assigned to OMHAR
9. In a Section 223(a)(7) transaction, provide to the OMHAR Regional Director the original executed new FHA-insured Note and submit a Certification of Closing Attorney, Form 7.8, to the OMHAR Regional Director requesting Endorsement of the new FHA-insured Note

and requesting authorization for Partial Payment of Claim. The Certification of Closing Attorney and request for authorization for Partial Payment of Claim must not be submitted until the following have occurred:

- Loan documents must have been recorded
 - All funds except FHA claim have been deposited with Closing Escrow Agent
 - Title policy has been issued
10. Provide instruction to the OMHAR Regional Office Director regarding the faxing and forwarding of the original endorsed note to the new mortgagee
 11. When requesting a Partial Payment of Claim authorization from the OMHAR Regional Office Director in financing transactions other than Section 223(a)(7), provide a Certification of Closing, Form 7.11, certifying that the loan documents have been recorded, and that all funds except the FHA claim have been deposited with the Closing Agent and title policies have been issued
 12. If there is a Section 223(a)(7) refinancing, prepares and executes HUD Form 290
 13. Fax copies of new notes and mortgages to OMHAR HQ Closing Coordinator immediately after closing (unrecorded mortgages are acceptable at this time)
 14. Prepare and distribute the Closing Dockets pursuant to guidance in Chapter 8

B. Closing Escrow Agent (Third Party Fiduciary) Responsibilities.

The Closing Escrow Agent will be selected by the PAE with the approval of all parties. The Closing Escrow Agent must be an experienced third party fiduciary, be bonded and insured, and have multifamily real estate closing experience. The Closing Escrow Agent must have an arms length relationship with all parties to the closing. It is recommended that the Closing Escrow Agent be part of a major title company. The Closing Escrow Agent expense may be included in the transaction costs.

The following list identifies usual responsibilities of the Closing Escrow Agent. It is not all-inclusive and is intended as information only. The Closing Escrow Instructions prepared by the PAE Attorney will provide deal specific directions.

1. Capture all closing documents, including specific HUD documents, as listed in the Closing Documents Checklist (Form 7.2)
2. Capture and disburse all funds
3. Provide recording instructions to the title company

C. Owner and Owner's Attorney.

1. Owner triggers start of closing by executing the Restructuring Commitment
2. Owner is first to execute closing documents
3. Owner's attorney issues Opinion of Owner's Counsel (Form Legal Opinion in Appendix F) and, if applicable, FHA Opinion of Owner's Counsel
4. Owner pays his or her portion of rehabilitation and other costs to the Closing Escrow Agent
5. Owner executes final closing documents

D. OMHAR Regional Office.

Relationship Manager

1. Monitors the closing process, assisting the PAE business staff and attorney
2. Acts as liaison between PAE and Regional Director
3. Forwards Claim Payment Package to the OMHAR HQ Closing staff at least sixteen (16) days prior to closing
4. Acts as liaison between PAE and OMHAR HQ Closing Section in regards to Partial Payment of Claim Package and Restructuring Commitment
5. Coordinates execution of Restructuring Commitment, Firm Commitment and final closing documents by Regional Director

Regional Director

1. Executes Restructuring Commitment
2. Executes Section 223(a)(7) Firm Commitment if applicable
3. Receives Claim Payment Package from the PAE, prepares and executes forms as applicable
4. Coordinates with the PAE Attorney, OMHAR HQ Closing Section, and Closing Escrow Agent to facilitate claim payment

5. Upon receipt of partially executed closing documents, Certification of Closing (Form 7.3), loan document checklist, pro forma title policy and opinions of the owner's and mortgagee's attorneys from the PAE Attorney, executes final closing documents as applicable and returns executed documents to the Closing Escrow Agent
6. Executes HUD Form 290, if applicable
7. In a restructuring using Section 223(a)(7) financing, upon receipt of Certificate of Closing Attorney, Form 7.8, endorses new mortgage note, faxes a copy, and forwards original to new mortgagee
8. Upon receipt of Certificate of Closing Attorney (either Form 7.8 or 7.11 as appropriate), authorizes the request for Partial Payment of Claim by the OMHAR HQ Closing Manager

E. HUD Multifamily Hub or Program Center:

1. When notified by OMHAR Regional Office, reserves or prepares to recapture Section 8 funding, as needed
2. Executes Section 8 HAP and Section 236 contracts and Recapture Agreement, as needed, and notifies the PAE Attorney for coordination of contract in Closing Escrow
3. Where using Section 221(d)(4) or Section 223(f) FHA insured takeout financing, the Multifamily Hub or Program Center executes a Firm Commitment and coordinates with PAE attorney for a simultaneous closing
4. Receives Closing Docket and acknowledges receipt and transition

F. Existing Mortgagee or Loan Servicer:

1. If a loan modification, an attorney representing the lender or current servicer of the existing FHA-insured mortgage should work closely with the owner's attorney to complete the closing documents and draft Settlement Sheet.
2. If applicable, mortgagee executes loan modification documents and forwards to the Closing Escrow Agent.
3. If the existing mortgage is to be paid off, executes Release of Mortgage and forwards to the Closing Escrow Agent.
4. If requesting a Section 541(b) Claim payment, prepares and submits to Closing Escrow Agent or PAE:
 - the Section 541(b) Claim form,

- Certification of Current Mortgage Balance,
- Authorization letter to allow Claim payment to be paid through the Closing Escrow, and
- HUD 9807

G. New Mortgagee or Loan Servicer

1. New Mortgagee's attorney works closely with the PAE attorney and the owner's attorney to prepare the closing documents
2. Executes applicable loan documents
3. At the appropriate time, wire transfers new first mortgage funds to the Closing Escrow Agent
4. Pays mortgage insurance premium to the Closing Escrow Agent, if new loan has FHA mortgage insurance
5. Acts as post-closing Rehabilitation Escrow Account holder, if applicable

H. Title Company .

1. Provides pro forma title policy prior to closing pursuant to OMHAR's guidelines
2. Records documents pursuant to closing escrow instructions
3. Issues final title policy

I. HUD Multifamily Claims Branch

1. Branch Chief or designee receives Partial Payment of Claim Package from the OMHAR HQ Closing Section at least fifteen (15) days prior to closing
2. Reviews Partial Payment of Claim Package and notifies OMHAR HQ Closing Section of any necessary changes
3. Receives authorization to request Section 541(b) Claim payment from OMHAR HQ Closing Manager after all required actions have taken place
4. Submits Section 541(b) Claim payment request to Treasury Department

J. HUD's Multifamily Insurance Operations Branch.
Where applicable, receives from PAE and processes the following documents: Form HUD 290 ("Closing Memorandum"), Initial Premium Receipt, Form HUD 9807 ("Request for Insurance Termination").

Pre-Closing

SECTION 7-5

- A. **Restructuring Commitment.** The PAE and OMHAR Regional Office should coordinate closely to ensure that the owner and his or her attorney receive the necessary instructions to begin closing. The Restructuring Commitment cannot be executed prior to the completion of the Environmental Evaluation (Form 4.4) and the form HUD-4128 (available on HUDClips).
1. Execution. Preparation for closing starts when the owner executes the Restructuring Commitment (see Chapter 6) and:
 - a) the owner and new mortgagee both execute the Firm Commitment for FHA mortgage insurance, if the Restructuring Plan calls for FHA-insured financing;
 - b) the owner receives a commitment for conventional financing from a new mortgagee; or
 - c) the OMHAR Regional Office issues a Firm Approval Letter, if the Restructuring Plan calls for financing under the HFA 542(c) Risk-sharing program.
 2. Forwarding to PAE and OMHAR. The owner should return the Restructuring Commitment and the original of any Firm Commitment/Firm Approval Letter to the PAE upon execution. The PAE will forward the original Firm Commitment/Firm Approval Letter to the OMHAR Regional Office.
 3. Notifying OMHAR Regional Office. The PAE must update the Mark-to-Market MIS tracking system when it receives the Restructuring Commitment executed by the owner and the Firm Commitment/Firm Approval Letter, as required under the terms of the Restructuring Plan. The PAE should advise the OMHAR Regional Office if problems arise or are anticipated in closing the transaction.
 4. Preliminary Closing Deadline. The PAE should set a preliminary closing date that is no more than sixty (60) days from the date the owner executed the Restructuring Commitment. The closing process should take no more than sixty (60) days to complete. The Restructuring Commitment expires at the end of the sixty (60) days unless OMHAR provides a written extension executed by the original approving authority.

B. Choosing the Title Company and Closing Escrow Agent (third party fiduciary).

The PAE must select a title company and closing escrow agent satisfactory to all parties. It is recommended that the title company and closing escrow agent have experience in multi-family project FHA insured restructurings. Since they are serving as a third party fiduciary, a key factor in selecting the title company and closing escrow agent is that the transaction be an arm's length transaction. -

C. Closing Instructions from the PAE to the Owner: Upon receiving the fully executed Restructuring Commitment and any Firm Commitment/Firm Letter, the PAE should forward to the owner and his or her attorney the following closing materials:

1. Transmittal Letter. Explains mortgage restructuring closing and provides general instructions. (Form 7.1)
2. Closing Documents Checklist. Lists mortgage restructuring closing documents for each mortgage financing alternative. (Form 7.2)
3. Closing Parties Checklist. Identifies and provides contact information for key parties involved in the closing process. (Form 7.7)

D. PAE Notice to the Existing Mortgagee of Debt Restructuring.

The PAE must provide formal notification (Form 7.9) to the existing mortgagee of the debt restructuring, stating that the Restructuring Commitment constitutes authority for the existing mortgagee to accept prepayment conditioned on completion of restructuring and executing and recording of the Use Agreement. Authority to accept prepayment expires simultaneously with the expiration of the Restructuring Commitment. A copy of the executed Restructuring Commitment is part of the formal notification. Further, the PAE should provide information regarding the closing escrow and request that the existing mortgagee provide the following to the closing escrow:

1. Executed Application for Section 541(b) Payment (Form 7.6)
2. Authorization for payment of claim to be made to the Closing Escrow Agent (or other) and official corporate resolution naming corporate officers (Authorization should be typed on mortgagee's letterhead and signed by authorized party.)
3. Executed Release of Deed of Trust/Mortgage

4. Executed Insurance Termination Request for Multifamily Mortgage HUD Form 9807

Settlement of Payments and Funds Disbursement

SECTION 7-6

- A. **Settlement of Payments.** The Closing Escrow Agent is responsible for settling payments, in accordance with the wiring instructions from the PAE attorney. Payments to escrow must be settled prior to closing. Payments that must be settled include:
 1. Owner's Contribution. Unless the owner is a housing cooperative, the owner must wire the contribution amount for rehabilitation costs and all other costs, as called for in the Restructuring Commitment, to the closing escrow for appropriate disbursement.
 2. Disbursement of New Mortgage. If there is take-out financing, the new mortgagee must wire transfer the loan amount to the Closing Escrow Agent for disbursement to the existing mortgagee or loan servicer and/or to the rehabilitation escrow account.
 3. Reserve for Replacement Funds. The existing mortgagee should forward the reserve for replacement funds to the closing escrow; or if there is a source of cash in the escrow, this amount can be netted out against the payoff.
 4. Partial Payment of Claim. The payment from the FHA insurance fund will be paid to the Closing Escrow Agent pursuant to the existing mortgagee's authorization (or to the existing mortgagee or servicer as authorized) for disbursement to the existing mortgagee in order to pay off the first lien.
- B. **Disbursement of Funds.** The Sources and Uses of Funds statement will provide disbursement details. The following is a general overview of the disbursements. The source of funds being disbursed may include the following: new first mortgage, the partial payment of claim, reserve for replacement funds, residual receipts, grants, owner contribution. The claim funds will be paid to the existing mortgagee or its servicer. The new first mortgage funds will be disbursed partially to the existing mortgagee, partially to the new mortgagee to fund the reserve for replacement funds escrow account with the remainder to be disbursed pursuant to the Sources and Uses statement. The owner's contribution will be disbursed partially to the rehabilitation escrow account

with the remainder disbursed according to the Sources and Uses statement. The Final Sources and Uses Statement will be the Closing Escrow Agent's disbursement instructions.

1. Reserve for Replacement. The Closing Escrow Agent should disburse said funds to the first mortgagee to be held in an escrow account. In the event that the existing mortgage is 100% written down, and not refinanced with a new insured first mortgage, the HUD Multifamily Cash Management Branch will service the loans. In this event, the Closing Escrow Agent should disburse the reserve for replacement funds to the HUD Multifamily Cash Management Branch at the following address:

HUD Multifamily Payment Processing Center
PO Box 70764
Chicago, IL 60673

If the owner wants the Reserve for Replacement invested, a letter must be sent requesting investment instructions to the HUD Multifamily Note Servicing Branch at the following address:

P.O. Box 44804
Washington, D.C. 20026-4804

2. Rehabilitation Escrow Account. Where the restructuring transaction provides financing for rehabilitation needs (twelve-month physical needs other than those that the owner must correct prior to approval of the Restructuring Plan), the owner must establish a rehabilitation escrow account with the new mortgagee for the first mortgage, or with an escrow agent, if there is no first mortgage (or the new first mortgagee does not accept the responsibility). The rehabilitation escrow holder releases funds from the rehabilitation escrow account, upon authorization from the rehabilitation escrow administrator.
3. Mortgage Insurance Premium (MIP).
 - a) The up-front (first year's) MIP must be paid by the mortgagee at closing. The OMHAR Regional Office (RO) will provide an official receipt, Form HUD-27038 for the Closing Escrow Agent or PAE to prepare at closing. The Closing Escrow Agent or PAE, as appropriate, will provide copies to the RO upon execution.
 - b) Each receipt issued must be identified by a unique official receipt number. The OMHAR RO should assign the receipt number at closing. Each OMHAR

RO should designate an individual to handle assignment of receipt numbers and maintain a log of issued receipt numbers for the region. Receipt numbers should be assigned according to the following guidelines:

- i. the first three (3) digits identify the geographic location of the OMHAR RO (e.g., 012 signifies New York); then
 - ii. M2M; then
 - iii. sequential numbers beginning with 001 for example 012M2M001
- c) At closing, the Closing Escrow Agent will issue an official receipt for the up-front MIP from the lender and forward the check for deposit by HUD.
- i. The original receipt with the original check should be sent to the Department of Housing and Urban Development, Box 277167, Atlanta, GA 30384-1767.
 - ii. Checks or receipts from different Section 223(a)(7) closings should be sent to the lockbox separately. A copy of the receipt should be sent to the lender. A copy of the receipt should be retained by the PAE to be included in the closing dockets.
- d) Questions regarding receipt of payments, issuance of official receipts, and depositing payments may be directed to Brian Hines at (202) 708-0614, extension 2796.

Partial Payment of Claim

SECTION 7-7

- A. **General** The payment of the insurance claim is the most important part of the full restructuring transaction and the most difficult to implement in a timely manner. The following process was developed to ensure all necessary information has been provided and authority given to request payment from the FHA insurance fund. The information compiled for the Multifamily Claims Branch must be in its office NO LATER THAN FIFTEEN (15) days prior to the funding request. If the information is not received by that time or is incomplete, the funding and/or closing date of the transaction will be adjusted accordingly.

B. Preparation of Section 541(b) Claim and Other Internal Control Documents. HUD's Multifamily Claims Branch must have sufficient advance notice of the Section 541(b) Claim.

1. Immediately following the owner's execution of the Restructuring Commitment, the PAE notifies the existing mortgagee of the debt restructuring, provides a copy of the Restructuring Commitment, and requests the necessary information and documentation.
2. The existing mortgagee should provide the requested information within a few weeks of the request. At least 45 days prior to closing, if necessary, the PAE should follow up with the existing mortgagee in order to ensure timely receipt of the information. The existing mortgagee should submit said documents directly to the Closing Escrow Agent, who will arrange with the PAE for the delivery of the appropriate documents for inclusion in the Claim Payment Package.
3. At Least Eighteen (18) Days Prior to Closing. The PAE business staff assembles the Claim Payment Package which contains the documents listed in the Claim Payment Checklist (Form 7.4):
 - a) Form 7.4 Claim Payment Checklist
 - b) Form 7.5 Claim Payment Summary
 - c) Restructuring Commitment, including Sources and Uses and Special Terms and Conditions
 - d) Certification of Mortgage Balance (from existing mortgagee)
 - e) Wiring Instructions for Partial Payment of Claim, Payment Information Form
 - f) Written Authorization from Existing Mortgagee for Payment to be Sent to Servicer or Other Entity and official corporate resolution naming corporate officers
 - g) Form 7.6 Application for Section 541(b) Claim Payment
 - h) Mortgagee Record Change (HUD 92080) (if applicable)
 - i) Insurance Termination Request for Multifamily Mortgage (HUD 9807)
4. At Least Sixteen (16) Days Prior to Closing. The OMHAR Regional Office

should prepare and execute, as necessary, and submit to the OMHAR HQ Closing Section the Partial Payment of Claim Package.

5. At Least Fifteen (15) Days prior to Closing. OMHAR's Closing Manager delivers the executed claim documents to HUD's Multifamily Claims Branch Chief, or designee. If there are any problems with the information submitted, the Multifamily Claims Branch will notify the OMHAR Closing Manager, who will notify the PAE business staff or attorney.

C. Payment of Section 541(b) Claim. HUD settles its Section 541(b) Claim obligations at closing.

1. Notification of OMHAR Regional Office Director. The OMHAR Regional Office Director receives notification from the PAE attorney of the following in order to authorize the claim submission:
 - a) the Form Legal Opinion from the owner's attorney has been received and is acceptable
 - b) all prerequisite closing funding requirements have been met
 - c) upon receipt of FHA insurance funds, the Closing Escrow Agent is prepared to disburse payments as necessary
 - d) the appropriate documents have been recorded
 - e) title policy has been issued

The OMHAR Closing Manager will notify the HUD Multifamily Claims Branch Chief or designee, via email and follow up telephone call that authority is granted to submit the request for payment to the Treasury.

2. HUD's Multifamily Claims Branch Chief or Designee. Upon receipt of proper notification from the OMHAR Closing Manager, the HUD Multifamily Claims Branch Chief or designee submits the request to the appropriate Treasury office to wire transfer the appropriate funds in accordance with the wiring instructions provided earlier.

Closing Document Preparation, Execution, and Recordation

SECTION 7-8

A. **Completion of Closing Documents.** The PAE attorney, working with the Closing Escrow Agent, the owner, the owner's attorney, and an attorney for the existing mortgagee (in the case of a loan modification) or the new mortgagee, and Multifamily Hub or Program Center, if FHA-insured (in the case of 221(d)(4) or 223(f) take-out financing), must oversee the completion of all closing documents and provide copies and the Certification of Closing Documents (Form 7.3) to the OMHAR Regional Director. For more specific guidelines for completing the legal documents, see Closing Instructions to PAE Attorney in Appendix F.

1. Timing. Document preparation starts as soon as the owner receives closing instructions from the PAE. It should take no more than forty-five (45) days. All documents should be completed and submitted to the PAE (or the Closing Escrow Agent, as applicable) at least ten (10) days prior to closing, with the exception of the HUD Multifamily Claims documents. (See Section 7-7 above for a detailed explanation of the claim payment process.)

2. Legal Requirements.

a) *Hiring an Attorney.* The PAE should use an attorney experienced in multifamily restructuring finance (including FHA insurance programs) to complete the closing documents. Any outside attorney will be subject to the conflict of interest rules.

b) *Paying Attorney's Costs.* Attorney fees will be recognized to the extent allowed in the Portfolio Restructuring Agreement (PRA).

c) *Using Standardized Documents.* The PAE attorney shall use the standard form closing documents provided by OMHAR and HUD that are appropriate to the first mortgage financing alternative agreed to under the terms of the Restructuring Commitment. "Standard form closing document" means that neither the PAE attorney nor any other party is permitted to alter the document, except for changes required under state law, such as notary acknowledgments.

d) Using Form 7.3, the PAE attorney must certify that all standard form closing documents are complete,

executed, and consistent with the terms of the Restructuring Commitment.

3. General Instructions for Completing Closing Documents.

The PAE attorney has primary responsibility for completing the OMHAR closing documents and in completing or reviewing Section 223(a)(7) required closing documents. For additional guidance, see Form 7.2 Closing Document Checklist, and Closing Instructions to PAE Attorney in Appendix F.

a) *FHA Number.* If there will be FHA-insured takeout financing, the **new** FHA Project Number should be typed on each take out financing closing document if not otherwise included in the document. (The PAE contacts the local HUD field office for the new FHA number.) **The old FHA number should be typed on each OMHAR closing document.**

b) *Specific State and Local Requirements.* Any changes in the forms required by state or local law must be set out in an addendum to the document with a statement clarifying that the change is required by State or local law and must include specific citations to the state or local law requiring the change.

c) *Recorded Documents.* All recorded documents to be returned to OMHAR must be marked with the following return address:

HUD-OMHAR
1280 Maryland Avenue SW, Suite 4000
Washington, D.C. 20024
Attn: Closing Manager

4. Cooperating with the Owner's and Mortgagee's Attorneys. The PAE attorney should work closely with the owner's attorney and mortgagee's (or loan servicer's) attorneys to complete the closing documents.

5. Wiring Instructions. The PAE should obtain wiring instructions from all working parties with payments to settle at closing. Instructions should include the following information:

- a) Wiring numbers for lenders or servicers
- b) Names, addresses, telephone numbers and points of contact
- c) Tax identification numbers

6. Closing Escrow Instructions from the PAE Attorney to the Closing Escrow Agent.

- a) *Preparation and Review.* About forty-five (45) days prior to closing, the PAE attorney is responsible for drafting instructions for the Closing Escrow Agent who will be responsible for the closing escrow. The instructions must include specific information in order to close the escrow correctly and expeditiously. It is suggested that all parties utilize the closing escrow instructions to include their triggers and facilitate clear coordination of effort. The OMHAR HQ Legal Liaison and Closing Coordinator may review the instructions for accuracy and completeness. The instructions should include the following information:
- i. names, addresses, points of contact, and other contact information for all parties to the escrow, including HUD departments;
 - ii. wiring instruction or payment information from all parties as applicable;
 - iii. all required executed and miscellaneous documents (including Section 8 documents);
 - iv. all sources of funds;
 - v. all disbursements of funds and specific information regarding the timing of funding;
 - vi. specific funding instructions if all funds will not be funneled through the escrow (e.g., notification of receipt of funds from the mortgagee, etc.);
 - vii. the order in which the documents must be recorded; and
 - viii. a clause stating that the executed Release of Mortgage will not be recorded until the disbursement to the existing mortgagee has been made
 - ix. method of unwinding the escrow if the closing does not occur
- b) At least thirty (30) days prior to closing, the Closing Escrow Agent should execute the Escrow Instructions and return it to the PAE attorney.

B. Managing Closing Document Execution.

1. PAE Attorney's Central Coordinating Role. The PAE attorney manages closing document execution and confirms that the appropriate parties receive, execute, notarize (as needed), and return all documents to the appropriate parties. All documents may be forwarded to the PAE, who in turn will ensure that the Closing Escrow Agent receives the documents in a timely manner. The exception to this rule is the existing mortgagee. In order to minimize confusion, the existing mortgagee is requested to forward all documents directly to the Closing Escrow Agent. The Closing Escrow Agent will coordinate with the PAE Attorney regarding documents requiring PAE administration.
2. Preparation, Execution and Distribution of Closing Documents. The Closing Document Checklist (Form 7.2) provides required standard form closing documents for most financing arrangements. (If a specific financing arrangement is not listed, contact the OMHAR HQ Closing Section for assistance.) The PAE Attorney prepares the M2M closing documents, arranges for execution of the documents, reviews take out financing loan documents for consistency with the Restructuring Commitment and coordinates the Closing Date and Closing structure with the Closing Parties.
3. Title Insurance. With respect to the status of title to a project, for review and certification purposes, the PAE and PAE Attorney may rely upon such title reports, title commitments, new title policy, or other endorsements to an existing title policy provided by the title company. See Title Instructions in Appendix F for specific title requirements.

C. Review and Certification of Legal Documents.

1. When the owner, new mortgagee and existing mortgagee have properly executed all relevant closing documents, the PAE Attorney must review them to ensure they are complete, have not been altered, and conform to the terms and conditions of the Restructuring Commitment and Firm Commitment for FHA Insurance, if applicable. At least nine (9) days prior to closing, after the appropriate parties have executed the closing documents, and the PAE Attorney has approved them, the PAE Attorney should forward the partially-executed closing

documents that require OMHAR's execution to the OMHAR Regional Office with the following information:

- a) Certification of Closing Documents (Form 7.3)
 - b) Legal Opinion of Owner's Attorney (Appendix F)
2. Review by OMHAR Regional Office. The OMHAR Regional Office staff should conduct a brief review of the documents to ensure that all appropriate documents are included (using the Closing Document Checklist Form 7.2) and all documents are properly executed. OMHAR should not conduct a detailed review of the closing documents since the PAE Attorney has certified as noted.
 3. Execution by OMHAR Regional Office. The OMHAR Regional Office Director should execute the appropriate closing documents as outlined in Form 7.2, Closing Documents Checklist, and as advised by the PAE Attorney.
 4. Returning Documents to the Closing Escrow Agent. The OMHAR Regional Office Director should return the executed closing documents directly to the Closing Escrow Agent at least five (5) days prior to closing by overnight mail, and notify the PAE that this has been completed. The logistics of this action should be determined by the PAE Attorney based on the Closing Escrow schedule.
- D. **Closing Escrow Agent Document Holding.** The Closing Escrow Agent captures all closing documentation from the PAE, the OMHAR Regional Office, and the existing mortgagee, whether or not the document requires recordation. The Closing Escrow Agent will capture all funds from applicable parties, disburse funds as instructed, and ensure the recordation of all necessary documents in the appropriate order. The Closing Escrow Agent will provide to the PAE all remaining unrecorded, executed documents to be filed in the appropriate closing dockets.
- E. **Setting Final Closing Date.** The PAE, the title company, and the Closing Escrow Agent must coordinate with one another, as well as the OMHAR Regional Office, the OMHAR Closing Manager, and any other interested parties, to set a final closing date. At least thirty (30) business days prior to closing, the PAE should work with all parties to set a final date.
- F. **Transmitting Closing Information from the PAE to All Working Parties.** After coordinating reviews and

establishing the closing date, the PAE should prepare and send a transmittal letter to all working parties. The letter should: 1) be sent within five (5) days of the final closing date; 2) advise that the closing documents are complete and conform to the Restructuring Commitment and the Firm Commitment (if applicable); 3) indicate the final date of closing; and 4) provide instructions for completing an escrow closing.

G. Recordation and Final Closing.

1. Recordation. The order of recordation should be:
 - a) Release of Regulatory Agreement;
 - b) Use Agreement;
 - c) Subordination Agreement of Existing FHA-insured Mortgage (if loan modification);
 - d) New First Mortgage, Modification of FHA-insured Mortgage, or Modification and Subordination of HUD-held Mortgage;
 - e) New FHA First Mortgage Regulatory Agreement with M2M Rider;
 - f) Security Agreement (if applicable);
 - g) Mortgage Restructuring Mortgage/Deed of Trust with M2M Rider;
 - h) Mortgage Restructuring Mortgage Regulatory Agreement;
 - i) Security Agreement (if applicable);
 - j) Contingent Repayment Mortgage with M2M Rider;
 - k) Contingent Repayment Mortgage Regulatory Agreement;
 - l) Security Agreement (if applicable); and
 - m) UCC Financing Statements (recorded with appropriate governmental agency)
 - n) Release of existing Mortgage/Deed of Trust;
 - o) Release of existing Security Agreement (if applicable);
 - p) UCC Termination Statements
2. Closing Completed. Closing is complete when the PAE attorney drafts and submits a Certificate of Closing to the OMHAR Regional Office Director.

Note: The OMHAR Closing Manager will fax a copy of the Mortgage Restructuring Note, the Contingent Repayment Note, and mortgages to the Multifamily General Ledger Accounting Office and the Multifamily Note Servicing Branch at this time. Original documents will be sent to the OMHAR Closing Manager who will coordinate their safekeeping with the Multifamily Note Servicing Branch.

H. Endorsement for Full Mortgage Insurance under Section 223(a)(7).

1. Conditions for Endorsement. The OMHAR Regional Office Director will endorse the Note for full mortgage insurance when all of the following have occurred.
 - a) All required Section 223(a)(7) insured mortgage closing documents, and all M2M required closing documents to consummate the restructuring transaction, have been properly executed, notarized, as needed, and recorded.
 - b) All of the conditions of the Firm Commitment have been satisfied.
 - c) The mortgagee has paid the initial mortgage insurance premium, equal to the first year's payment, in the case of Section 223(a)(7) mortgage insurance.
 - d) Request for Final Endorsement of Credit Instrument (FHA Form 92023) has been executed by the new mortgagee and mortgagor and delivered with the Note to be endorsed for FHA mortgage insurance. The mortgagee must make appropriate arrangements for handling the original promissory Note, both before and after endorsement.
 - e) Title Policy for the Section 223(a)(7) insured mortgage as per the Title Insurance Instructions set out in Appendix F.
2. Required Actions Immediately Following Endorsement. Immediately following endorsement for full FHA mortgage insurance, the OMHAR Regional Office should:
 - a) follow the established procedures for paying mortgage insurance fees and premiums (see Section 7-6.B.3.);
 - b) forward the closing memorandum (HUD Form 290), executed by the Multifamily Hub or Program Center Director and the closing attorney, to the Mortgage Insurance Operations Branch in the FHA

Comptroller's Office in headquarters (return receipt requested),

- c) deliver the endorsed Note directly to the insured mortgagee in accordance with the arrangements made in advance by the mortgagee.

I. Endorsement under Section 542(c) HFA Risk-Sharing.

If the new mortgagee is providing refinancing under the Section 542(c) HFA Risk-Sharing program, the HFA will present to the OMHAR Regional Office for endorsement at closing: (1) the closing docket, and (2) evidence that the initial mortgage insurance premium has been paid to the Mortgage Insurance Operations Branch in the FHA Comptroller's Office in headquarters.

1. Conditions for Endorsement. If the OMHAR Regional Office determines that all documentation and certifications are complete and in conformance with the terms and conditions of the Restructuring Commitment and OMHAR's Firm Approval Letter, the OMHAR Regional Office Director will endorse the Note for mortgage insurance and forward it to the Closing Escrow Agent for disbursement.
2. Required Actions Immediately Following Endorsement. Within five (5) days of escrow closing, the PAE must provide complete closing dockets to the Multifamily Hub or Program Center with jurisdiction. The OMHAR Regional Office must provide the completed closing memorandum (HUD Form 290) to the Mortgage Insurance Operations Branch in the FHA Comptroller's Office in headquarters (return receipt requested), with a copy to the Multifamily Hub or Program Center.

J. Endorsement under Section 542(b) GSE Risk-Sharing.

Government-sponsored enterprises (GSEs) that have entered into Risk-Sharing Agreements with HUD may reinsure project mortgages and present mortgage notes to the OMHAR Regional Office for endorsement; this occurs after the loan has closed. GSEs are prohibited from refinancing their own loans without prior OMHAR approval.

1. Submission Requirements. The GSE will submit through the PAE to the OMHAR Regional Office the following:
 - a) initial mortgage insurance premium;
 - b) signed addendum to the Risk-Sharing Agreement;
 - c) computer diskette with basic project information;

- d) Transmittal Letter containing certification by the PAE and the GSE of the proposed reinsurance transaction's consistency with the Restructuring Plan;
 - e) the completed subsidy layering analysis performed by the PAE; and
 - f) the Environmental Checklist (Form 4.4) prepared by the PAE.
2. OMHAR Processing. Upon receipt of the request, the OMHAR Regional Office must do the following:
- a) enter the project number electronically into the DAP system;
 - b) notify the Multifamily Hub with jurisdiction to take the required Section 8 funding actions, if not already done;
 - c) execute the Risk-Sharing Addendum, unless the OMHAR Regional Office Director determines that the addendum does not comply with the requirements of the Risk-Sharing Agreement; and
 - d) within five (5) days after execution, update the DAP system
 - e) provide complete closing memorandum (HUD Form 290) to the Mortgage Insurance Operations Branch in the FHA Comptroller's Office in headquarters (return receipt requested), with a copy to the Multifamily Hub or Program Center.

Section 221(d)(4) Substantial Rehabilitation or Section 223(f) Refinancing

SECTION 7-9

- A. **General** The closing process for assets under Section 221(d)(4) and Section 223(f) mortgage insurance follows the closing guidance above, with the exception of the process for closing the first mortgage. The OMHAR Regional Office, Multifamily Hub or Program Center, PAE, new mortgagee, and owner will follow HUD's current procedures for closing on a first mortgage with a Firm Commitment for FHA mortgage insurance under Section 221(d)(4) or Section 223(f) with the exception that the loan closes concurrently with the Mark-to-Market closing. This Operating Procedures Guide does not include detailed instructions for the first mortgages under these sections.

- B. **Document Execution.** The PAE attorney and business staff will review all mortgage Restructuring documents and ensure consistency between the terms of the FHA mortgage insurance closing and the terms of the Restructuring Commitment before submitting them to the OMHAR Regional Office.
- C. **Internal Control.** The internal control process will be the same as with other first mortgage financing alternatives. The Section 221(d)(4) and 223(f) closings should be simultaneous with the Mark-to-Market closing. The closing escrow instructions should include the needs of all parties to ensure an accurate, smooth closing.

Section 8 HAP Contract

SECTION 7-10

The OMHAR Regional Office is responsible for preparation of the appropriate Section 8 HAP Contract, coordinating contract execution, and forwarding the contract to the HUD Multifamily Hub or Program Center for execution. Reservation of Section 8 funds, data tracking, and the many details necessary to initiate and fully implement the Section 8 contract are described in other guidance, and must be coordinated between the OMHAR Regional Office, the PAE, and the Multifamily Hub or Program Center. Please contact the OMHAR HQs Closing staff for more information.

List of Business Forms

SECTION 7-11

No.	Title
7.1	Transmittal Letter from PAE or PAE Attorney to Owner with Closing Instructions
7.2	Closing Documents Checklist
7.3	Certification of Closing Documents from PAE Attorney to OMHAR Regional Office Director
7.3-TPA	Certification of Transfer of Physical Asset Documents from PAE to OMHAR Regional Office Director
7.4	Claim Payment Checklist
7.5	Claim Payment Summary
7.6	Application for Claim Payment
7.7	Closing Parties Checklist
7.8	Certification of Closing Attorney - FHA Insured
7.9	Notification Letter from PAE to Existing Mortgagee
7.10	Rehabilitation Escrow Deposit Agreement
7.11	Certificate of Closing Attorney - Non-FHA Insured Financing

List of Legal Forms

For a complete list of Legal Forms, see Form 7.2 Closing Document Checklist in Appendix F.

Appendices

Appendix F contains the following information:

- Guide to PAE Attorney - Closing Documentation
- Title Instructions
- Mark-to-Market Closing Checklist for Section 223(a)(7)
- Standard Form Legal Documents (available on the OMHAR web site)

Appendix D describes HUD requirements for TPA's.